

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #16	CCRB Case #: 201601726	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 02/06/2016 8:10 PM	Location of Incident: 30 Post Lane	Precinct: 121	18 Mo. SOL 8/6/2017	EO SOL 8/6/2017	
Date/Time CV Reported Thu, 03/03/2016 10:03 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/03/2016 10:03 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Dmitry Brushnivsky	01417	936251	121 PCT
2. POM Michael Ustick	05406	948517	121 PCT
3. POM Ryan Smith	15423	957177	121 PCT
4. POM John Fabrizio	24129	950389	121 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Anthony Rubilotta	01076	957112	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Dmitry Brushnivsky	Abuse: Sergeant Dmitry Brushnivsky stopped § 87(2)(b)	
B.POM Michael Ustick	Abuse: Police Officer Michael Ustick frisked § 87(2)(b)	
C.POM Michael Ustick	Abuse: Police Officer Michael Ustick searched § 87(2)(b)	
D.SGT Dmitry Brushnivsky	Abuse: Sergeant Dmitry Brushnivsky stopped § 87(2)(b)	
E.SGT Dmitry Brushnivsky	Abuse: Sergeant Dmitry Brushnivsky stopped § 87(2)(b)	
F.SGT Dmitry Brushnivsky	Abuse: Sergeant Dmitry Brushnivsky frisked § 87(2)(b)	
G.SGT Dmitry Brushnivsky	Abuse: Sergeant Dmitry Brushnivsky frisked § 87(2)(b)	
H.POM Michael Ustick	Abuse: Police Officer Michael Ustick frisked § 87(2)(b)	
I.POM Michael Ustick	Abuse: Police Officer Michael Ustick frisked § 87(2)(b)	
J.SGT Dmitry Brushnivsky	Abuse: Sergeant Dmitry Brushnivsky searched the vehicle in which § 87(2)(b) was an occupant.	
K.POM Michael Ustick	Abuse: Police Officer Michael Ustick searched the vehicle in which § 87(2)(b) was an occupant.	

Officer(s)	Allegation	Investigator Recommendation
L.POM John Fabrizio	Abuse: Police Officer John Fabrizio searched the vehicle in which § 87(2)(b) was an occupant.	
M.SGT Dmitry Brushnivsky	Abuse: Sergeant Dmitry Brushnivsky stopped § 87(2)(b)	
N.SGT Dmitry Brushnivsky	Abuse: Sergeant Dmitry Brushnivsky searched the vehicle in which § 87(2)(b) was an occupant.	
O.POM Ryan Smith	Abuse: Police Officer Ryan Smith searched the vehicle in which § 87(2)(b) was an occupant.	
P.SGT Dmitry Brushnivsky	Abuse: Sergeant Dmitry Brushnivsky interfered with § 87(2)(b)'s use of a recording device.	
Q.SGT Dmitry Brushnivsky	Force: Sergeant Dmitry Brushnivsky used physical force against § 87(2)(b)	
R.SGT Dmitry Brushnivsky	Abuse: Sergeant Dmitry Brushnivsky interfered with § 87(2)(b)'s use of a recording device.	
S.SGT Dmitry Brushnivsky	Force: Sergeant Dmitry Brushnivsky used physical force against § 87(2)(b)	
T.SGT Dmitry Brushnivsky	Discourtesy: Sergeant Dmitry Brushnivsky spoke discourteously to § 87(2)(b)	
U.POM Michael Ustick	Discourtesy: Police Officer Michael Ustick spoke discourteously to § 87(2)(b)	

Case Summary

On March 3, 2016, § 87(2)(b) filed this complaint with the CCRB via telephone.

On February 6, 2016, at approximately 8:10 p.m., § 87(2)(b) parked his vehicle in the vicinity of 30 Post Lane, in Staten Island. § 87(2)(b) exited the vehicle while his girlfriend, § 87(2)(b) remained inside. § 87(2)(b) had a brief interaction with his friend, § 87(2)(b) outside of § 87(2)(b) vehicle and subsequently proceeded to walk down Post Lane. As § 87(2)(b) was walking, Sgt. Dmitry Brushnivsky ordered PO Michael Ustick, both of the 121st Precinct, to stop him (**Allegation A**). PO Ustick then allegedly frisked and searched § 87(2)(b) (**Allegations B and C**). At this point, Sgt. Brushnivsky had § 87(2)(b) and § 87(2)(b) stopped (**Allegations D and E**). Sgt. Brushnivsky ordered § 87(2)(b) and § 87(2)(b) to step out of the vehicle and frisked them (**Allegations F and G**). At some point, PO Ustick also frisked § 87(2)(b) and § 87(2)(b) (**Allegations H and I**). Sgt. Brushnivsky, PO Ustick, and PO John Fabrizio all acknowledged that they searched § 87(2)(b) vehicle (**Allegation J, K, and L**).

At some point, PO Ryan Smith and PO Anthony Rubilotta, also of the 121st Precinct, arrived on the scene. Sgt. Brushnivsky first observed § 87(2)(b) inside § 87(2)(b) vehicle and approached the vehicle alone to stop § 87(2)(b) (**Allegation M**). § 87(2)(b) was subsequently brought towards his vehicle and he provided consent for the officers to search everything in his vehicle except the glove compartment and trunk. Sgt. Brushnivsky and PO Smith allegedly searched the vehicle, including the closed compartments (**Allegation N and O**). § 87(2)(b) was recording the incident and at some point while the officers were searching his vehicle, Sgt. Brushnivsky aggressively approached § 87(2)(b) and requested his phone. Sgt. Brushnivsky then physically attempted to grab his phone as he was recording (**Allegation P**). § 87(2)(b) alleged that Sgt. Brushnivsky accidentally swiped his face with an open palm as he tried to grab the phone and shoved him against the fence as Sgt. Brushnivsky placed him in handcuffs (**Allegation Q**). Moreover, § 87(2)(b) stated that after she retrieved the phone from § 87(2)(b) Sgt. Brushnivsky attempted to grab the phone from her and punched her in the face (**Allegation R and S**).

On one of the recordings, Sgt. Brushnivsky is depicted saying, “No bullshit” to § 87(2)(b) (**Allegation T**) (Board Review 02). On a separate recording, PO Ustick is depicted telling § 87(2)(b) “You’re 17, you don’t know shit” (**Allegation U**) (Board Review 03).

All of the civilians were released without being arrested or issued any summonses.

This case exceeded 90 days because the undersigned was attempting to identify the fourth victim, later identified via police documents as § 87(2)(b). This case was closed less than a month after the last officer was interviewed.

This case contains video evidence, SnagIt copies of which have been placed below. Please note that the original videos can be found at (Board Review 02 and 03) and the transcriptions can be found at (Board Review 07 and 08).



2016-07-08_12-07-05.mp4

- § 87(2)(b) rejected mediation during his in-person CCRB interview.
- On June 2, 2016, the New York Comptroller’s Office indicated that none of the civilians has filed a Notice of Claim in regards to this incident (Board Review 16).
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)

- This is § 87(2)(b) first CCRB complaint (Board Review 23).
- This is the first CCRB complaint § 87(2)(b) has been involved in (Board Review 24).
- § 87(2)(b)
- This is the first CCRB complaint § 87(2)(b) has been involved in (Board Review 21).
- Sgt. Brushnivsky has been a member of service for 11 years and has had 17 CCRB allegations pleaded against him in nine cases; none of the allegations have been

substantiated (Board Review 20). § 87(2)(g)

- PO Ustick has been a member of service for 6 years and has had 7 CCRB allegations pleaded against him in three cases; none of the allegations have been substantiated (Board Review 19). § 87(2)(g)
- PO Smith has been a member of service for 2 years and has no prior CCRB complaints (Board Review 18).
- PO Fabrizio has been a member of service for 5 years and has no prior CCRB complaints (Board Review 17).

Potential Issues

§ 87(2)(b) failed to appear to two of his scheduled appointments and has not called to reschedule. § 87(2)(b) has not scheduled an interview or provided a statement to the CCRB despite the undersigned exhausting contact attempts.

Findings and Recommendations

Explanation of Subject Officer Identification

From the 1 minute and 19 second mark to the 1 minute and 22 second mark in the video recording an officer is captured saying, “Don’t bullshit me, man” (Board Review 02). However, the officer’s face or any identifying attributes were not depicted. § 87(2)(b) was shown the video and she affirmed that it was the officer who she described as a white male, in uniform, bald, with blue eyes, 6’2” - 6’3” tall, weighs approximately 160-170 pounds, “built”, and in his mid-20s – late 30s (Board Review 08). The investigation determined that § 87(2)(b)’s description of the aforementioned officer closely matched Sgt. Brushnivsky. According to Sgt. Brushnivsky’s pedigree information, he is a white male, 5’10” tall, weighs 175 pounds, bald, with blue eyes, and was § 87(2)(b) old at the time of incident (Board Review 11). All of the officers were shown the video. PO Rubilotta and PO Ustick both affirmed that it was Sgt. Brushnivsky speaking immediately prior to the profanity used while the other officers did not recognize who was speaking on the recording (Board Review 12 and 13). The voice immediately prior to the profanity closely matches the voice of the officer who stated the profanity. Based on the aforementioned details, **Allegation T** was pleaded against Sgt. Brushnivsky.

In PO Ustick’s testimony, he acknowledged saying “You’re 17, you don’t know shit” at the 6:26 minutes. Therefore, **Allegation U** was pleaded against PO Ustick.

Allegation A –Abuse of Authority: Sergeant Dmitry Brushnivsky stopped § 87(2)(b)

Allegation D –Abuse of Authority: Sergeant Dmitry Brushnivsky stopped § 87(2)(b)

Allegation E –Abuse of Authority: Sergeant Dmitry Brushnivsky stopped § 87(2)(b)

It is undisputed that § 87(2)(b) and § 87(2)(b) were stopped during this incident.

§ 87(2)(b) had a brief conversation with § 87(2)(b) through the passenger side window at the location (Board Review 01). He denied making any physical contact or exchanging anything with § 87(2)(b). After the brief conversation, § 87(2)(b) saw an unknown vehicle driving

slowly down the street. § 87(2)(b) could not tell it was a police vehicle at this point because the vehicle had its high beams on. At this point, § 87(2)(b) walked away from § 87(2)(b) vehicle. § 87(2)(b)'s account was consistent with § 87(2)(b) account of the incident (Board Review 08).

Sgt. Brushnivsky and PO Ustick both stated that it was the presence of the known vehicle, their knowledge of the known criminals, and the location of incident that made them suspect that there was drug activity (Board Review 11 and 12). The Stop Question and Frisk reports prepared by PO Ustick noted that they were all suspected of criminal possession and criminal sale of controlled substance (Board Review 10 and 25).

Sgt. Brushnivsky, PO Ustick, and PO Fabrizio were the first officers to observe § 87(2)(b) vehicle parked in front of 30 Post Lane (Board Review 11, 12, and 14). Sgt. Brushnivsky, PO Ustick, and PO Fabrizio all stated that the address of 30 Post Lane was a known drug prone location and had prior knowledge that summonses for marijuana has been issued at the location in the past. Additionally, during the incident, Sgt. Brushnivsky and PO Ustick both observed a vehicle (Sgt. Brushnivsky described the vehicle as a black Jaguar and PO Ustick described this vehicle as a black Mercedes) that was known to the department and their Conditions Team (Board Review 11 and 12). Sgt. Brushnivsky stated that he recognized the vehicle known to be occupied by people who are known to be engaged in criminal activity and that either § 87(2)(b) or § 87(2)(b) was a known criminal (Board Review 11). Sgt. Brushnivsky has also had prior interactions with the individual in regards to marijuana offenses. Moreover, he stated that the vehicle was known to be parked at this particular location in the past.

Based on his knowledge of this vehicle, PO Ustick stated that he knew that it was occupied by § 87(2)(b) and § 87(2)(b) (Board Review 12). PO Ustick and PO Fabrizio both stated that PO Ustick has issued § 87(2)(b) and § 87(2)(b) summonses for marijuana in the past (Board Review 12 and 14). Moreover, PO Ustick had knowledge that § 87(2)(b) has 30 prior arrests, some of which were made at the location. He stated that § 87(2)(b) was known to the department as a dealer of narcotics, possession of firearms, selling of firearms, and various violent crimes. PO Ustick stated that he saw § 87(2)(b) leaning against the vehicle and walking away upon the sight of police. He did not see § 87(2)(b) making any physical contact with the occupants inside the vehicle. His intent was to investigate a possible narcotics sale based on his training, his knowledge of § 87(2)(b) criminal history, and his observations of the vehicle parked in front of 30 Post Lane.

PO Fabrizio did not mention that he had any prior knowledge of this vehicle and did not know who the occupants were (Board Review 14).

Sgt. Brushnivsky stated that he initially observed § 87(2)(b) exit the vehicle and he subsequently directed PO Ustick to stop § 87(2)(b). Sgt. Brushnivsky approached the vehicle with the intent to stop the individuals in order to investigate the possible drug activity inside the vehicle. He acknowledged that he did not know what occurred inside the vehicle. Moreover, Sgt. Brushnivsky did not have any prior knowledge of § 87(2)(b).

§ 87(2)(b), § 87(2)(a) 160.50

With founded suspicion, officers can ask pointed questions that would reasonably lead individuals to believe they are suspected of a crime, and that the questions asked can be more extended and accusatory in order to focus upon possible criminality. Furthermore, *Debour* held that officers can forcibly stop and detain an individual whenever they have a reasonable suspicion that the individual has committed, is committing, or is about to commit a crime, *People v. Debour* 40N.Y.2d 210 (1976) (Board Review 26).

Despite presence at a drug-prone location and the officers' training in narcotics, if the officer cannot see what is passed between the individuals supposedly making an exchange, and cannot describe any other furtive conduct, they do not have reasonable suspicion to stop the individuals in question, and instead only possess a founded suspicion that criminal activity is foot, *People v. Loper*, 2014 N.Y. App. Div LEXIS 1735 (2014) (Board Review 30).

Knowledge of a person's past record, as well as the nature and location of the area where a suspect is detained, can both be considered relevant factors in determining whether a police officer's conduct during an encounter is reasonable, so long as there is also some present indication of criminality based upon observable conduct or reliable hearsay information. *People v. Boulware*, 130 A.D.2d 370 (1987) (Board Review 29).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation B –Abuse of Authority: Police Officer Michael Ustick frisked § 87(2)(b)

Allegation C –Abuse of Authority: Police Officer Michael Ustick searched § 87(2)(b)

It is undisputed that § 87(2)(b) was frisked during this incident.

§ 87(2)(b) alleged that PO Ustick immediately frisked him and placed his hands inside his pants pockets after he was stopped. PO Ustick subsequently removed § 87(2)(b) phone and ID from his pockets.

In PO Ustick’s CCRB testimony, he initially denied frisking or searching § 87(2)(b) at all during the incident (Board Review 12). However, when the UF250 report prepared for § 87(2)(b) was shown to PO Ustick, he stated the he did not remember frisking him, but “maybe giving him a pat down on his front garments,” and that PO Smith frisked him after he was handcuffed. PO Ustick stated that he performed the aforementioned action because § 87(2)(b) was placed in handcuffs and had stood up while being in handcuffs. PO Ustick acknowledged that he could see that § 87(2)(b) did not have anything in his pockets. PO Smith did not recall frisking any civilians during the incident.

The UF250 report indicated that § 87(2)(b) was frisked because of knowledge of suspect’s prior violent behavior: use of force/ use of weapon and refusal to comply with officer’s direction(s) leading to reasonable fear for safety (Board Review 10). The UF250 report did not indicate that § 87(2)(b) was searched during the incident.

With founded suspicion, officers can ask pointed questions that would reasonably lead individuals to believe they are suspected of a crime, and that the questions asked can be more extended and accusatory in order to focus upon possible criminality. Furthermore, Debour held that officers can forcibly stop and detain an individual whenever they have a reasonable suspicion that the individual has committed, is committing, or is about to commit a crime, People v. Debour 40N.Y.2d 210 (1976) (Board Review 26). A frisk is permissible only if an officer possess a particularized, reasonable suspicion that a suspect is armed and dangerous, People v. Gonzalez, 295A.D.2d 183 (2002) (Board Review 39). Patrol Guide Procedure 212-11 states that a frisk is a running of the hands over the clothing, feeling for a weapon (Board Review 40).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation F –Abuse of Authority: Sergeant Brushnivsky frisked § 87(2)(b)

Allegation G –Abuse of Authority: Sergeant Brushnivsky frisked § 87(2)(b)

Allegation H –Abuse of Authority: Police Officer Michael Ustick frisked § 87(2)(b)

Allegation I –Abuse of Authority: Police Officer Michael Ustick frisked § 87(2)(b)

It is undisputed that PO Ustick and Sgt. Brushnivsky frisked § 87(2)(b) and § 87(2)(b)

Sgt. Brushnivsky, PO Ustick, and PO Fabrizio all smelled an odor of marijuana emanating from § 87(2)(b) vehicle (Board Review 11, 12, and 14). Moreover, PO Fabrizio stated that § 87(2)(b) and § 87(2)(b) both acknowledged that they had smoked marijuana (Board Review 14). § 87(2)(b) acknowledged that § 87(2)(b) smokes marijuana, but he did not smell an odor of marijuana during this incident (Board Review 01).

Sgt. Brushnivsky stated that he frisked § 87(2)(b) and § 87(2)(b) because he had knowledge that one of them was a known criminal at the time (Board Review 11). The

§ 87(2)(b) (Board Review 34 and 38). Moreover, he stated that it was also because it was a darkly lit area and that only he and PO Ustick were on the scene at the time. He further stated that he did not see any bulges on both individuals and that there were no additional factors which led him to frisk § 87(2)(b) and § 87(2)(b)

PO Ustick stated that it was a calm situation with § 87(2)(b) and § 87(2)(b) (Board Review 12). However, he frisked both of them for the officers' safety since he suspected that § 87(2)(b) was possibly in possession of a weapon due to his violent criminal history and firearm history. § 87(2)(b) (Board Review 33).

PO Rubilotta denied smelling the odor of marijuana, but he stated that Sgt. Brushnivsky had informed him of the odor's presence (Board Review 15). Neither PO Smith nor PO Rubilotta was aware that § 87(2)(b) vehicle had been searched (Board Review 13 and 15). PO Smith and PO Rubilotta both did not recall if any of the civilians were frisked or searched during the incident.

The UF250 prepared for § 87(2)(b) and § 87(2)(b) both note that they were frisked for the sole reason of "knowledge of suspect's prior criminal violent behavior/use of force/use of weapon" (Board Review 10 and 25).

The odor of marijuana alone is sufficient to provide police who are trained and experienced in the use of marijuana, with probable cause to search a vehicle and its occupants, People v. Johnson Misc.3d 1214A (Sup. Ct. Queens 2009) (Board Review 31).

Absent any additional factors, the officers would have been permissible in searching § 87(2)(b) vehicle based on the officers' smelling an odor of marijuana emanating from this vehicle. However, there were no police documentation or summonses issued noting that any marijuana was recovered and the UF250 report. Moreover, only PO Fabrizio stated that the occupants acknowledged to having smoked marijuana.

§ 87(2)(g)

Allegation J –Abuse of Authority: Sergeant Dmitry Brushnivsky searched the vehicle in which § 87(2)(b) was an occupant.

Allegation K –Abuse of Authority: Police Officer Michael Ustick searched the vehicle in which § 87(2)(b) was an occupant.

Allegation L –Abuse of Authority: Police Officer John Fabrizio searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that Sgt. Brushnivsky, PO Ustick, and PO Fabrizio searched § 87(2)(b) vehicle.

Sgt. Brushnivsky, PO Ustick, and PO Fabrizio searched the vehicle after smelling an odor of marijuana emanating from the vehicle (Board Review 11, 12, and 14). None of the officers were aware that another officer had done so.

The odor of marijuana alone is sufficient to provide police who are trained and experienced in the use of marijuana, with probable cause to search a vehicle and its occupants, People v. Johnson, Misc.3d 1214A (Sup. Ct. Queens 2009) (Board Review 31).

§ 87(2)(g)

§ 87(2)(g)

Allegation M –Abuse of Authority: Sergeant Brushnivsky stopped § 87(2)(b)

It is undisputed that Sgt. Brushnivsky and PO Smith approached § 87(2)(b) while she was sitting in § 87(2)(b) vehicle. § 87(2)(g)

§ 87(2)(b) was sitting in § 87(2)(b) vehicle as she waited for him to finish speaking with his friends inside a vehicle that parked in front. § 87(2)(b) stated that Sgt. Brushnivsky and PO Smith approached her and Sgt. Brushnivsky knocked on her window which prompted her to exit the vehicle (Board Review 08). When one of the officers asked what she was doing there, she told him that she as waiting for § 87(2)(b) to finish speaking with his friends. Sgt. Brushnivsky

then asked why § 87(2)(b) was speaking with his friends and she told him that she did not know why.

Sgt. Brushnivsky explained that he approached § 87(2)(b) alone to further continue his investigation the possible drug transaction (Board Review 11). He did not know whether the two vehicles were connected at the time. However, he noticed § 87(2)(b) in this vehicle parked behind § 87(2)(b) vehicle. Sgt. Brushnivsky stated that there was no crime suspected at this point. When he arrived at the vehicle he also smelled an odor of marijuana emanating from this vehicle. Moreover, when he asked § 87(2)(b) why she was there and where did she live she was not forthcoming in her answers. At that point Sgt. Brushnivsky determined that § 87(2)(b) was also not free to leave in that she was also possibly engaged in the drug transaction. At some point later, Sgt. Brushnivsky also learned that § 87(2)(b) was § 87(2)(b)'s girlfriend.

PO Smith stated that at some point he noticed § 87(2)(b) speaking to § 87(2)(b) by a separate vehicle. PO Smith initially stated that he did not recall if § 87(2)(b) was suspected of any crimes. During his CCRB interview, PO Smith referred to his memo book and stated that they were suspected of criminal sale of controlled substance and criminal possession of controlled substance because they were present in a drug prone location. He did not provide any additional details. He stated that he approached § 87(2)(b) alone solely to obtain her name. PO Smith stated that § 87(2)(b) told him that the vehicle belonged to her and that she gave consent to search this vehicle.

PO Ustick denied smelling an odor of marijuana emanating from this vehicle. PO Fabrizio did not approach any other vehicle besides the one where § 87(2)(b) and § 87(2)(b) were inside of. PO Rubilotta also stated that he did not smell an odor marijuana but was informed by Sgt. Brushnivsky that there was an odor of marijuana. However, PO Rubliotta was not informed of where the smell was emanating from.

Initially, Sgt. Brushnivsky did not know of any connection between the two vehicles and approached to ask § 87(2)(b) non-accusatory questions. However, in the process, he smelled an odor of marijuana and she provided evasive answers which led him to determine that she was not free to leave. Sgt. Brushnivsky did not determine her to be detained until he smelled the marijuana emanating from the vehicle and until he determined that she was being evasive as she was not forthcoming when questioned.

In the absence of any concrete indication of criminality, officers could approach the defendant for the purpose of requesting information. The police action must be justified by some sufficient, articulable reason. Officers are warranted in interacting with an individual to the extent necessary to gain explanatory information, also known as common-law inquiry, whenever there is founded suspicion that criminal activity is occurring. With founded suspicion, officers can ask pointed questions that would reasonably lead individuals to believe they are suspected of a crime, and that the questions asked can be more extended and accusatory in order to focus upon possible criminality. Furthermore, *Debour* held that officers can forcibly stop and detain an individual whenever they have a reasonable suspicion that the individual has committed, is committing, or is about to commit a crime, *People v. Debour* 40N.Y.2d 210 (1976) (Board Review 26). The odor of marijuana alone is sufficient to provide police who are trained and experienced in the use of

marijuana, with probable cause to search a vehicle and its occupants, People v. Johnson Misc.3d 1214A (Sup. Ct. Queens 2009) (Board Review 31).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation N –Abuse of Authority: Sergeant Dmitry Brushnivsky searched the vehicle in which § 87(2)(b) was an occupant.

Allegation O –Abuse of Authority: Police Officer Ryan Smith searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that § 87(2)(b) gave consent for the officers to search limited areas of his vehicle. § 87(2)(g)

§ 87(2)(b) acknowledged that he told the officers that they could search the vehicle, but not the glove compartment or the trunk (Board Review 01). He was watching and recording the officers as they entered his vehicle. As Sgt. Brushnivsky and PO Smith searched his vehicle, § 87(2)(b) saw both officers look inside his glove compartment and inside a pharmacy bag which contained a pill bottle.

§ 87(2)(b) also saw PO Smith look inside the glove compartment and saw Sgt. Brushnivsky look inside the arm rest in the vehicle (Board Review 08).

Sgt. Brushnivsky stated that when he approached § 87(2)(b) vehicle, he smelled an odor of marijuana emanating from this vehicle as well (Board Review 11). Sgt. Brushnivsky asked § 87(2)(b) whether there was anything illegal inside the vehicle. § 87(2)(b) denied having anything illegal in the vehicle and subsequently told Sgt. Brushnivsky that he could search the vehicle. Sgt. Brushnivsky did not recall whether § 87(2)(b) ever specified where the officers

could not search. Sgt. Brushnivsky did not recall if he opened any compartments or if any compartments had been opened. Moreover, he did not recall seeing any bags or looking inside any bags in the vehicle. Sgt. Brushnivsky stated that he found loose marijuana inside of this vehicle.

PO Smith initially stated that § 87(2)(b) stated that she owned the vehicle and gave officers permission to look inside, but after watching the video he did not recall whether § 87(2)(b) actually did so (Board Review 13). PO Smith did not recall the specifics of the consent given and how he was made aware that someone gave consent to search the vehicle. Moreover, PO Smith did not recall looking inside the glove compartment or any compartments inside the vehicle or looking inside any bags. Nothing was recovered as a result of the search.

PO Rubilotta, PO Fabrizio, and PO Ustick stated that they did not see any officers searching § 87(2)(b) vehicle.

From 3:26 minutes to 3:36 minutes in the video recording, § 87(2)(b) gave the officers consent to search everywhere in his vehicle except his glove compartment and trunk. From the 3:44 minutes to the 4:22 minutes in the video recording, Sgt. Brushnivsky and PO Smith are depicted inside § 87(2)(b) vehicle looking towards the front passenger side (Board Review 02). Due to the angle of the video, it is unclear exactly what the two officers were looking at and whether they looked inside the glove compartment in the vehicle.

The odor of marijuana alone is sufficient to provide police who are trained and experienced in the use of marijuana, with probable cause to search a vehicle and its occupants, People v. Johnson, Misc.3d 1214A (Sup. Ct. Queens 2009) (Board Review 31).

The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of objective reasonableness, People v. McFarlane 2012 N.Y. App. Div. Lexis 1757 (2012) (Board Review 28).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation P –Abuse of Authority: Sergeant Dmitry Brushnivsky interfered with § 87(2)(b)'s use of a recording device.

Allegation R –Abuse of Authority: Sergeant Dmitry Brushnivsky interfered with § 87(2)(b)s use of a recording device.

It is undisputed that Sgt. Brushnivsky attempted to take § 87(2)(b) cell phone from § 87(2)(b) and § 87(2)(b) during the incident.

§ 87(2)(b) and § 87(2)(b) stated that § 87(2)(b) was standing in front of his vehicle as he was recording the Sgt. Brushnivsky and PO Smith searching his vehicle (Board Review 01 and 08). As § 87(2)(b) was recording, Sgt. Brushnivsky approached him and attempted to physically take the phone away from him. § 87(2)(b) stated that he threw his phone towards § 87(2)(b) and she retrieved it from the ground. In § 87(2)(b)s CCRB testimony, after she retrieved the phone from the ground, Sgt. Brushnivsky approached her and attempted to pull the phone out of her hands. At some point, Sgt. Brushnivsky released his grip on the phone. § 87(2)(b) stated that she subsequently placed her phone in her pocket and was unaware that the phone was recording until she returned it back to § 87(2)(b).

PO Smith stated that he did not recall § 87(2)(b) holding a phone during the incident or there being any issues in regards to someone recording with a cellphone (Board Review 13).

In Sgt. Brushnivsky's testimony, he stated that as he was searching the vehicle, § 87(2)(b) and § 87(2)(b) were being aggressive, loud, and did not comply with commands to stay put and not come close to the officers (Board Review 11). He stated that at some point, they both came within close proximity to him and were ordered to stay back. Sgt. Brushnivsky did not know what § 87(2)(b) was doing at this point and was not sure if he was texting or calling someone to the location because he saw § 87(2)(b) holding his phone out in front of his body with two hands. However, Sgt. Brushnivsky later stated, in his CCRB testimony, that he was aware of the existence of video footage because he believed that § 87(2)(b) recorded the incident. Sgt. Brushnivsky instructed § 87(2)(b) to put the phone away and to stay back. Sgt. Brushnivsky stated that § 87(2)(b) did not comply. Sgt. Brushnivsky subsequently attempted to physically take the phone out of § 87(2)(b) hand. In the process, § 87(2)(b) passed the phone to § 87(2)(b). Sgt. Brushnivsky did not recall what § 87(2)(b) did with the phone after receiving it, but he also attempted to take the phone out of her hands. Sgt. Brushnivsky stated that he wanted to take the phone away because he had the same concern with § 87(2)(b) as he did with § 87(2)(b) when he held the phone.

Sgt. Brushnivsky stated that to his understanding, when a civilian is recording an incident the individual must stay back and cannot come within the officer's arm's reach and that if the person was detained then they must record safely.

At the 3:44 minutes into the video, § 87(2)(b) is initially standing by the front passenger headlight of the vehicle (Board Review 02). At 4:08 minutes, as the officers were searching the vehicle, § 87(2)(b) walked towards the front passenger door of the vehicle next to PO Smith as he was still recording. An officer is then heard instructing § 87(2)(b) to step back. At 4:15 minutes, § 87(2)(b) returned to the front passenger headlight of the vehicle while PO Smith was still inside the front passenger side of the vehicle. At 4:21 minutes, as § 87(2)(b) was still standing in the same spot, an officer identified by the investigation as Sgt. Brushnivsky,

approached him and the video becomes blurry. § 87(2)(b) subsequently states “What are you doing, officer? Why are you putting your hands on me?”

Sgt. Brushnivsky was shown the video and he affirmed that at one point, § 87(2)(b) came too close to PO Smith (Board Review 01). He stated that he and PO Smith then approached § 87(2)(b) and he attempted to take the phone away because he stated that he did not know what § 87(2)(b) was doing with the phone besides possibly recording and failed to stay back while they were searching the vehicle. PO Smith was also shown the video, but he did not have an independent recollection of what occurred during the video (Board Review 13).

Finest Message #9881632 states that officers are not permitted to interfere with a person’s use of a recording device during a police encounter unless said person is interfering police operations. Ordering someone to cease recording constitutes police interference (Board Review 32).

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]

Allegation Q –Force: Sergeant Dmitry Brushnivsky used physical force against § 87(2)(b)

Allegation S –Force: Sergeant Dmitry Brushnivsky used physical force against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b) alleged that as Sgt. Brushnivsky attempted to grab his phone Sgt. Brushnivsky accidentally swiped his face with an open palm (Board Review 01). Sgt. Brushnivsky then pushed § 87(2)(b) against gate while trying to still grab his phone. § 87(2)(b) stated that Sgt.

Brushnivsky held onto to one of his arms while his other arm was down by his side. § 87(2)(b) asked Sgt. Brushnivsky to let go and why he was doing this. Sgt. Brushnivsky then pulled § 87(2)(b) arms behind his back and placed him in handcuffs. § 87(2)(b) stated that he sustained two abrasions to the side of his nose and a minor abrasion to his upper lip which he documented in a photo that he stated he took on the night of the incident (Board Review 04). § 87(2)(b) alleged that he sustained the aforementioned injury by either being accidentally struck in the face by Sgt. Brushnivsky or by Sgt. Brushnivsky pushing him against the fence.

§ 87(2)(b) stated that after she retrieved the phone from the ground, Sgt. Brushnivsky approached her and attempted to grab the phone away as well (Board Review 08). § 87(2)(b) and Sgt. Brushnivsky were both pulling at the phone. § 87(2)(b) alleged that Sgt. Brushnivsky subsequently punched her in the face which prompted him to release his grip of the phone and tell an officer to detain her. § 87(2)(b) did not see this, but was later informed by § 87(2)(b) of the occurrence.

§ 87(2)(b) provided a photo of depicting a bruise under her left eye during the incident which was time stamped (9:37 p.m. on February 6, 2016) on her phone (Board Review 05).

Sgt. Brushnivsky stated that § 87(2)(b) did not comply with giving him the phone and handed it to § 87(2)(b) (Board Review 11). He stated that he attempted to pull the phone away from § 87(2)(b) by grabbing it and denied doing anything else. He then attempted to take the phone away from § 87(2)(b) using the same method. He did not recall if any officers assisted with retrieving the phone and if the phone was ever successfully taken away from the civilians. Sgt. Brushnivsky went to place § 87(2)(b) in handcuffs due to his behavior. Sgt. Brushnivsky stated that as he went to place § 87(2)(b) in handcuffs, he stiffened his arms and did not voluntarily place his hands behind his back. During Sgt. Brushnivsky's interview, he was initially unable to describe the physical force he used to place § 87(2)(b) in handcuffs. Sgt. Brushnivsky consulted with the SBA attorney and he later stated that he pulled both § 87(2)(b) arms behind his back and placed the handcuffs on him. Additionally, he stated that he did not recall using any additional force. Sgt. Brushnivsky did not recall pushing § 87(2)(b) against a fence or a gate and did not recall any other officers doing so. Sgt. Brushnivsky stated that § 87(2)(b) was also placed in handcuffs. He also recalled § 87(2)(b) stiffening her arms as she was placed in handcuffs, but he did not recall which officer placed her in handcuffs. Sgt. Brushnivsky did not recall punching § 87(2)(b).

PO Smith initially stated that there was pushing and shoving between him and § 87(2)(b) but after viewing the video footage he stated that this did not occur and that he did not know what occurred after § 87(2)(b) approached him (Board Review 13). Moreover, he stated that § 87(2)(b) was on the ground at some point, but he did not know how he got on the ground. PO Smith stated that § 87(2)(b) resisted by refusing to give his arms, fighting, and held his arms underneath his body. PO Smith denied using any additional force besides holding the male's arms. PO Smith stated that he did not recall seeing any officers push or shove § 87(2)(b). Moreover, he did not recall if § 87(2)(b) was in handcuffs or if there was any struggle that occurred between an officer and § 87(2)(b) during this incident. He did not recall if anyone was injured or complain of any injuries.

PO Ustick stated that he did not see any physical struggle when § 87(2)(b) and § 87(2)(b) were placed in handcuffs (Board Review 12). PO Fabrizio did not recall whether any civilians were handcuffed and was only later informed of this by PO Ustick (Board Review 14). PO Rubilotta stated that when he saw § 87(2)(b) and § 87(2)(b) they were already placed in handcuffs (Board Review 15).

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation T –Discourtesy: Sergeant Dmitry Brushnivsky spoke discourteously towards

§ 87(2)(b)

It is undisputed that Sgt. Brushnivsky used profanity when speaking with § 87(2)(b) PO Rubilotta and PO Ustick all recognized Sgt. Brushnivsky’s voice captured on the recording. PO Rubilotta and PO Ustick affirmed that they recognized Sgt. Brushnivsky’s voice immediately prior to the profanity, but the investigation determined that it was also Sgt. Brushnivsky who said, “Don’t bullshit me.”

Between the 1:19 minutes and 1:22 minutes in the video recording, Sgt. Brushnivsky is heard saying, “Don’t bullshit me” immediately after asking § 87(2)(b) what he was doing in the area (Board Review 02). Sgt. Brushnivsky did not deny using any profanities during the incident and only stated that he did not recall using discourteous language. When shown the video he stated that it could have been him or another officer that made that statement.

Patrol Guide Procedure 203-09 states that an officer must be “courteous and respectful” in their public contact (Board Review).

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation U –Discourtesy: Police Officer Ustick spoke discourteously towards § 87(2)(b)

It is undisputed that PO Ustick used profanity when speaking with § 87(2)(b)

At the 6 minute and 26 second mark in the recording, PO Ustick is depicted stating, “You are 17, you don’t know shit” towards § 87(2)(b) (Board Review 03). PO Ustick affirmed that he made that statement, but he did not recall who he was speaking to. He stated that this was just a statement and was not directed towards § 87(2)(b)

Patrol Guide Procedure 203-09 states that an officer must be “courteous and respectful” in their public contact (Board Review 27).

§ 87(2)(b), § 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date